

AGREEMENT NUMBER IGA-WPAG-WIFA-092823-05

**INTERGOVERNMENTAL AGREEMENT**

**BETWEEN**

**The City of Peoria**

**AND**

**The Water Infrastructure Finance Authority of Arizona**

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**THIS INTERGOVERNMENTAL AGREEMENT** (the “**Agreement**”) is made effective as of the date of signature of the last signatory hereto (the “**Effective Date**”), pursuant to the Arizona Revised Statutes (“**A.R.S.**”) §§ 11-951 through 11-954, as amended, by and between the Water Infrastructure Finance Authority of Arizona (the “**Authority**”), a body corporate and politic, the City of Peoria (the “**Recipient**”). The Authority and the Recipient may individually be referred to as “**Party**” or collectively as the “**Parties.**”

**RECITALS**

**WHEREAS**, the Legislature directed the Authority to distribute monies appropriated by Laws 2022, 1<sup>st</sup> Regular Session, Chapter 133 (Senate Bill 1720), Section 96, and

**WHEREAS**, the Parties are authorized under A.R.S. § 11-952, *et. seq.* to enter into this Agreement, and

**WHEREAS**, Laws 2022, 1<sup>st</sup> Regular Session, Chapter 133 (Senate Bill 1720), Section 96 appropriated funding from the State general fund for new water wells and water infrastructure projects (the “**Project**”).

**NOW THEREFORE**, the Recitals set forth above are incorporated into this Agreement and in consideration of the mutual promises and covenants below, the Authority and Recipient agree as follows:

**ARTICLE I – Terms and Conditions**

- 1.1. Award. After this Agreement is executed, the Authority shall issue warrants to the Recipient totaling \$10,000,000 (the “**Award**”). The Award shall be distributed in installments on a quarterly basis within thirty (30) days of the Authority’s receipt of the appropriated funds, unless otherwise approved by the Authority in writing. The Authority may disburse the Award by check, electronic means, or other transfer medium. An authorized officer of the Authority shall approve disbursements directly to Recipient and shall provide Recipient with a copy of the approval and the date approved.
- 1.2. Acceptance, Purpose, and Use of Award. The Recipient hereby accepts the Award under the terms and conditions of this Agreement. The Recipient shall complete the Project in accordance with Laws 2022, 1<sup>st</sup> Regular Session, Chapter 313 (Senate Bill 1720), Section 96. Recipient agrees to undertake and complete the Project in a timely manner, and to receive and expend the Award in accordance with this Agreement. Recipient agrees to utilize the Award only for the purpose of implementing the Project.

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- 1.3. Term of Agreement. The Agreement's Effective Date is the date of signature of the last signatory hereto. This Agreement remains in effect until completion of the Project, all related deposits are made, and all reporting requirements described in this Agreement have been received by the Authority (the "Term"). Any provisions for maintenance shall be perpetual, unless assumed by another competent entity.
- 1.4. Compliance with Applicable Laws. The Recipient shall perform all activities under this Agreement in accordance with all applicable (whether present or future) laws, ordinances, rules, regulations, requirements and orders of any governmental or administrative authority having or claiming jurisdiction over the Recipient's activities. The Parties further agree to cooperate in all ways reasonable and necessary to comply with the applicable statutes, including amending this Agreement as needed in the future and making any refunds or payments that might be required to bring the Parties into full compliance with applicable law.
- 1.5. Fund Availability. Any action by the Parties under this Agreement requiring the expenditure of funds is conditioned upon the availability of funds appropriated and allocated for the payment of such obligation. If funds are not appropriated, allocated and available or if the appropriation is changed by the legislature resulting in funds no longer being available for the continuance of this Agreement, this Agreement may be terminated by the Parties at the end of the period for which funds are available. No liability shall accrue to the Parties in the event this provision is exercised, and the Parties shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
- 1.6. Breach. The Parties agree that all conditions set forth herein are material to this Agreement and a breach of any condition is a material breach of this Agreement. The Recipient's use of the Award proceeds for any purpose other than as authorized under the provisions of this Agreement is a material breach of this Agreement.
- 1.7. Good Faith. The Parties will attempt in good faith to resolve all disputes, disagreements, or claims relating to this Agreement.
- 1.8. Repayment. Recipient agrees to repay the Award in whole or in part if the Recipient fails to use the Award for any purpose other than as authorized under the provisions of this Agreement. The Authority shall transfer any funds received under this section to the State of Arizona within thirty (30) days of receipt.

**ARTICLE II – Records & Reports**

- 2.1. Records, Audits and Inspections. Recipient shall maintain satisfactory financial accounts, books, records, documents, and other evidence sufficient to properly reflect the amount, receipt, and expenditure of the Award. The Authority shall have the right of access to records of the Recipient to conduct audits or other inspections. Upon request, the Authority's authorized representatives shall be provided with access and shall have the right to examine all documents, financial records, facilities, and activities related to Recipient's performance of this Agreement and to the receipt and expenditure of the Award. Recipient agrees to rectify issues identified in audits within the Authority prescribed time periods. Failure to comply with the request for audit or inspection, or a lack of documentation and records, is cause for termination of this Agreement or withholding of future disbursements.

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- 2.2. Retention. Pursuant to A.R.S. § 35-214 and 35-215, Recipient shall retain all records relating to this Agreement for a period of five years from the date of final payment to Recipient or as required by applicable law, whichever is longer.
- 2.3. Reporting Requirements. Recipient shall be responsible for providing various reports of all activities related to this Agreement both as identified in the Agreement and as requested by the Authority. Recipient shall also provide to the Authority any additional written information requested by the Authority in a timely manner and within reasonable deadlines as shall be set by the Authority. All financial reports required under this Agreement shall be prepared in accordance with generally accepted accounting standards, and shall be in form and substance satisfactory to the Authority. If there is any amount of the Award remaining after the Project is completed, Recipient shall report the remaining balance to the Authority. Failure to provide reports required under this Agreement as required is cause for termination of this Agreement or withholding of future disbursements.
- 2.4. Quarterly Reports. Recipient shall report to the Authority on Recipient's expenditure of the Award and the status of the Project within thirty (30) days of the end of each fiscal quarter following the date of this Agreement until Recipient expends the entire Award or completes the Project, whichever is first. Quarterly Reports shall contain: (1) the amount of Award funds expended; (2) the status of the Project; and (3) any additional information deemed necessary by the Authority.
- 2.5. Final Report. Audit. The Recipient shall submit a written report (the "**Final Report**") to the Authority: (1) certifying that the Project was completed in accordance with Laws 2022, 1<sup>st</sup> Regular Session, Chapter 313 (Senate Bill 1720), Section 96; and (2) containing any additional information deemed necessary by the Authority. The Final Report shall be submitted to the Authority within thirty (30) days of one of the following occurrences: (1) The Award funds have been expended; (2) The Project has been completed; or (3) The Agreement has otherwise been terminated.

**ARTICLE III - Miscellaneous**

- 3.1. This Agreement may be cancelled at any time up to thirty (30) days before the appropriated funds are issued, so long as the cancelling Party provides at least thirty (30) days prior written notice to the other Party. It is understood and agreed that, in the event the Recipient terminates this Agreement, the Authority shall in no way be obligated to complete or maintain the Project.
- 3.2. Recipient shall protect, defend, indemnify, and hold harmless the Authority and its board and committees, the State of Arizona, its elected and appointed officials, its agents, commissions, officers, directors, employees, volunteers and affiliates and each of them from any and all claims, demands, causes of action, damages, costs, expenses, attorney's fees, consultant's fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with this Agreement, Recipient's performance hereunder, Recipient's or Recipient's subcontractor's negligence including active or passive, or strict liability including but not limited to bodily injury, emotional injury, sickness or disease, or death to persons and/or damage to property of anyone, including loss of use thereof, caused or alleged to be caused by any act or omission of Recipient, or any subcontractor, or anyone directly or indirectly employed by any of them or anyone for the full period of time allowed by the law, regardless of any limitation of coverage by insurance, with the exception of the sole negligence or willful misconduct of the Authority. The provisions of this section shall survive the expiration or termination of this Agreement.
- 3.3. Recipient shall comply with the provisions of State Executive Order 2009-9. In performing this Agreement, Recipient shall not, and shall ensure that any and all contractors, subcontractors,

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- employees, agents, volunteers, officers, officials, directors, volunteers, and affiliates, also shall not discriminate, harass, or allow harassment against any person on the basis of sex, race, color, ancestry, religious cred, national origin, physical disability, mental disability, medical condition, age, marital status, or any other basis prohibited under law. Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.
- 3.4. Recipient shall comply with A.R.S. § 41-4401 and further acknowledges that any contractor or subcontractor who is contracted by Recipient to perform work related to this Agreement shall warrant its compliance with all federal immigration laws and regulations that relate to its employees and its compliance with A.R.S. § 23-214(A). Any breach of this warranty shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement. The Authority retains the legal right to inspect the employment records of any employee of any contractor or subcontractor who performs work related to this Agreement to ensure that the contractor or subcontractor is complying with the warranty in this paragraph and that the contractor agrees to make all employment records of said employee available during normal working hours to facilitate such an inspection.
  - 3.5. The substantive laws of Arizona shall govern the interpretation, validity, performance and enforcement of this Agreement. Any suit or action arising under this Agreement shall be commenced in the Superior Court of the State of Arizona in and for the County of Maricopa, Arizona.
  - 3.6. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
  - 3.7. Each provision of law and any terms required by law to be in this Agreement are a part of this Agreement as if fully stated in it.
  - 3.8. If any provision of this Agreement or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable.
  - 3.9. In the event of any controversy, which may arise out of this Agreement, the Parties agree to abide by arbitration as is set forth for public works contracts if required by A.R.S. § 12-1518.
  - 3.10. All notices required or permitted under this agreement, including reports from Recipient, or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered, mailed by registered or certified mail, or emailed to Recipient or the Authority at the following addresses:

**WIFA Project Manager**  
Laurie Gehlsen, Grants Coordinator  
Water Infrastructure Finance Authority of Arizona  
100 N 7<sup>th</sup> Ave, Suite 130  
Phoenix, AZ 85007  
Direct: (480) 647-4462  
[LGehlsen@azwifa.gov](mailto:LGehlsen@azwifa.gov)

**Recipient Project Manager**

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Either Party may designate any further or different addresses to which subsequent notices or other communications shall be sent, by notice in writing given to the other Party.

- 3.11. In accordance with A.R.S. § 11-952(D), attached and incorporated in this Agreement is the written determination of each Party’s legal counsel that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.
- 3.12. This written Agreement and attachments hereto constitute the entire Agreement between the Parties with respect to the subject matter hereto. It may not be released, discharged, changed or modified, except by an instrument in writing, signed by a duly authorized representative of each of the Parties, except as expressly provided otherwise in this Agreement.
- 3.13. This Agreement has been prepared by the combined efforts of the Parties and is not to be construed against any Party.
- 3.14. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 3.15. Each individual executing this Agreement warrants that they are duly authorized to execute and deliver this Agreement.

**ARTICLE IV - Signatures**

The Recipient hereby accepts the Award according to the above terms and conditions. The undersigned certifies that they have authority to enter into and sign a binding Agreement with the Authority on Recipient’s behalf.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized officers or officials, all as of the date first above written.

Signature
Chuck Podolak
Printed Name
Director, Water Infrastructure Finance Authority
Title
Date

Signature
Printed Name
Title
Date